

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

CRIMINAL NO. 1:CR-06-009

v.

JESSE KENLEY

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MEMORANDUM

Before the court is a motion for DNA testing and a motion for appointment of counsel filed by Defendant. Prior to Defendant's federal prosecution, he was charged in Dauphin County Court of Common Pleas for capital murder. Defendant claims that his request for full disclosure of evidence in that case was not forthcoming. He claims that DNA testing would have proven his innocence to the Dauphin County charges.

On January 4, 2006, Defendant pled guilty in this court to a three-count felony information charging him with interference with the commerce by threats and violence (Hobbs Act robbery and murder), conspiracy to interfere with commerce by threats and violence (Hobbs Act robbery), and witness tampering. Pursuant to the plea agreement, the United States would recommend that the court impose the maximum sentence of thirty-five years and a ten year term of supervised release. The Dauphin County District Attorney's Office agreed to dismiss all charges incident to the facts covered by the federal charges. Defendant knowingly and intelligently waived indictment and agreed to the terms of the plea agreement.

On September 9, 2009, Kenley filed a motion pursuant to 28 U.S.C. § 2255 which was denied by this court on January 7, 2010. The United States Court of Appeals for the Third Circuit affirmed this court's ruling on July 29, 2011, and the mandate was issued on August 31, 2011. While the instant motion is entitled "Motion for DNA Testing" it is actually a motion alleging incompetency of his federal counsel for not seeking DNA testing results and is, therefore, a second or successive motion pursuant to 28 U.S.C. § 2255. Defendant must seek permission from the Third Circuit Court of Appeals to file such a motion. *See* 28 U.S.C. § 2244(b)(3)(A).

Kenley has not sought permission from the Third Circuit Court of Appeals to file a second or successive petition pursuant to 28 U.S.C. § 2255 and, therefore, this court is without jurisdiction to entertain such motion. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: April 19, 2012.

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